UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1995/43
13 January 1995

ENGLISH
Original: ENGLISH/FRENCH
AND SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-first session
Item 11 of the provisional agenda

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

Human rights and unilateral coercive measures

Report of the Secretary-General

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Introduction

1. The Commission on Human Rights, in its resolution 1994/47 entitled "Human rights and unilateral coercive measures", requested the Secretary-General to submit, in consultation with Governments and specialized agencies, as well as with intergovernmental and non-governmental organizations, a report to the Commission at its fifty-first session on the coercive measures unilaterally implemented against developing countries hindering the full realization of all rights set forth in the Universal Declaration of Human Rights and other international human rights instruments, particularly the right of people to a minimum standard of living and development.

2. The Commission on Human Rights, in the same resolution, condemned the fact that certain countries using their predominant position in the world economy continue to intensify the adoption of unilateral coercive measures against developing countries, which are in clear contradiction with international law, such as trade restriction, blockades, embargoes, freezing of assets with the purpose of preventing these countries from exercising their right fully to determine their political, economic and social system and freely to expand their international trade. The Commission furthermore requested all States to refrain from adopting any unilateral coercive measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States and impedes the full realization of the rights set forth in the Universal Declaration of Human Rights and other international human rights instruments, in particular, the right of everyone to a standard of living adequate for their health and well-being, including food and medical care, housing and the necessary social services.

3. For the purpose of submitting his report to the Commission on Human Rights at its fifty-first session, the Secretary-General was requested by the Commission, in its resolution 1994/47, to consult Governments and specialized agencies, as well as intergovernmental and non-governmental organizations.

4. Accordingly, in a note verbale and letter dated 18 July 1994, the Secretary-General invited Governments, specialized agencies, as well as intergovernmental and non-governmental organizations to transmit information relevant to the subject matter.

5. As at 22 December 1994, the following Governments had responded to the Secretary-General's invitation: Belize, China, Cuba, Indonesia, Iraq, Libyan Arab Jamahiriya, Mauritius, Philippines.

6. As at 22 December 1994, the following United Nations bodies and specialized agencies had responded: Food and Agriculture Organization of the United Nations (FAO), General Agreement on Tariffs and Trade (GATT), International Labour Organisation (ILO), International Monetary Fund (IMF), United Nations Children's Fund (UNICEF), United Nations Conference on Trade and Development (UNCTAD), United Nations Development Programme (UNDP), World Food Programme (WFP). Of these organizations, FAO, IMF, UNDP, WFP, ILO and GATT had no information to submit to the Secretary-General.

7. As at 22 December 1994, the following non-governmental organizations responded to the invitation of the Secretary-General: the International

Confederation of Midwives, Institute of International Law Justitia et Pace, International Institute of Humanitarian Law, International Organization for the Elimination of All Forms of Racial Discrimination, International Progress Organization, Muslim World League. Some of these organizations indicated they had no information on this matter, while others sent information that was not directly relevant to the subject matter of the resolution. These replies are therefore not reproduced in this report.

8. As at 22 December 1994, the following intergovernmental organizations outside the United Nations system had replied: Organisation for Economic Co-operation and Development (OECD), the Conference on Security and Co-operation in Europe (CSCE) Office for Democratic Institutions and Human Rights, Inter-American Court of Human Rights. The OECD had no information to submit on this subject. The CSCE Office for Democratic Institutions and Human Rights noted that this question is of great interest and concern for the CSCE in its present mandate of preventive diplomacy. The CSCE also noted that current discussions among delegations to the CSCE focus on a code of conduct for CSCE States covering a wide range of security policy, human rights and governance issues. In view of the possibility that a final text on those standards of behaviour could include standards aimed at avoiding unilateral economic measures of the nature referred to in the resolution of the Commission on Human Rights, the CSCE Office for Democratic Institutions and Human Rights said that it would forward to the Secretary-General the final version of the standards. The Inter-American Court of Human Rights acknowledged receipt of the request for information.

9. For the purpose of assisting the Commission in its deliberations on this issue, the present report contains, in chapter I, brief general considerations on unilateral coercive measures and the international norms applicable thereto. Chapter II contains the replies or information received in compliance with the request contained in resolution 1994/47.

I. GENERAL CONSIDERATIONS

10. Resolution 1994/47 of the Commission on Human Rights is entitled "Human rights and unilateral coercive measures". Therefore the resolution is directed to those coercive measures that are of a unilateral origin.

11. Unilateral coercive measures can be classified as being of a diplomatic, economic, financial or military nature.

12. Paragraph 4 of the resolution refers to unilateral coercive measures "which are in clear contradiction with international law, such as trade restriction, blockades, embargoes, freezing of assets with the purpose of preventing these countries from exercising their right fully to determine their political, economic and social system and freely to expand their international trade".

13. In accordance with resolution 1994/47, the Commission's attention is drawn to the relevant provisions of the Charter of the United Nations and to resolutions adopted by the General Assembly concerning coercive measures.

14. The Commission on Human Rights, in its resolution 1994/47, recalled the principles set forth in the Charter of the United Nations. With respect to the subject matter of this report, Article 2, paragraph 4, and Article 2, paragraph 7, of the Charter are of special interest. The former reads: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations." The latter reads: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII."

15. Furthermore, the Commission on Human Rights recalled General Assembly resolution 2625 (XXV) of 24 October 1970, containing the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. This declaration restates the principles enumerated in Article 2 of the Charter. Its preamble reads in part:

> "Bearing in mind the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for fundamental human rights and of developing friendly relations among nations irrespective of their political, economic and social systems or the levels of their development ...
>
> "...
>
> "Recalling the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State ..."

16. The Declaration restates as the third principle "[t]he principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter."

17. In the context of this principle of non-intervention, the Declaration reads: "No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind."

18. Furthermore, the Commission reaffirmed General Assembly resolution 3281 (XXIX) of 12 December 1974, containing the Charter of Economic Rights and Duties of States. In its preamble, the Charter states its fundamental purpose, which is "to promote the establishment of the new international economic order". The Commission's resolution 1994/47 referred in particular to article 32 of the Charter, which is almost identical to the

above-quoted text of the Declaration on Principles of International Law: "No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights."

19. Finally, the Commission on Human Rights reaffirmed the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993. Paragraph 31 of Part I of this Declaration refers to unilateral measures not in accordance with international law and reads as follows:

> "The World Conference on Human Rights calls upon States to refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights and international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well being, including food and medical care, housing and the necessary social services. The World Conference on Human Rights affirms that food should not be used as a tool for political pressure."

20. Apart from the consideration that human rights cannot be argued to be exclusively within the domain of domestic jurisdiction of States, all States are obliged by international law to respect human rights. This obligation derives from international conventions, international customary law and certain overriding general principles of international law that include peremptory norms of international law, or jus cogens. Alternatively, there exists no clear norm in international law allowing States to interfere in countries where human rights are being violated.

21. These considerations together with comments submitted by Governments, specialized agencies, intergovernmental and non-governmental organizations are meant to assist the Commission on Human Rights in considering this subject matter in the light of the provisions contained in the conventions on both economic relations between States and on human rights, as well as international custom, general principles of law, and rules of jus cogens and obligations erga omnes that exist in the realm of the protection of human rights and the friendly relations between States.

II. REPLIES RECEIVED FROM GOVERNMENTS

Belize

[Original: English]
[12 August 1994]

22. The Government of Belize has not practised, and is not proposing any action, administrative or legislative, which would impose unilateral coercive measures on its nationals not in accordance with international law, or contrary to the rights set forth in the Universal Declaration of Human Rights.

China

[Original: Chinese]
[24 September 1994]

23. The Chinese Government considers that concepts of human rights are products of history, bound up with certain social, political and economic conditions and with individual countries' particular histories, cultures and outlooks. Countries at different stages of development or with dissimilar historical traditions and cultural backgrounds may also differ in their understanding and practice of human rights. Only if this diversity is acknowledged and respected can international cooperation on an equal footing be profitably pursued. Hence the human rights standards and patterns of certain countries neither can nor should be regarded as absolute, with the requirement that the whole world should conform to them. Turning them into a condition for economic assistance violates the principles of normal relations between States and is fundamentally unworkable.

24. States must discuss human rights questions and develop international cooperation based on reciprocal respect and equality to strengthen understanding and avoid misunderstandings, seeking common ground while reserving their positions on differences, and advancing together. China is opposed to the forcible imposition of individual viewpoints and interference in other countries' internal affairs, the application of pressure and the imposition of sanctions on the pretext of human rights, because this in itself is a violation of the basic human rights of other nations. Respect for human rights must include respect for other nations' right freely to choose their political, economic and social systems and paths to development.

25. For the mass of developing countries, respecting and protecting human rights means guaranteeing that their inhabitants can exercise to the full their rights to life and to development. When poverty and shortages are rife, people are not properly clothed and fed and the rudiments of life are not guaranteed, priority must go to efforts to deal with the problems of economic development: otherwise there can be no talk of human rights. Using unilateral coercive measures to pressure developing countries by political and economic means into changing the political and economic models and paths to development that they have chosen for themselves not only indicates a lack of respect for other countries' sovereignty but constitutes a brutal violation of their peoples' rights to life and to development.

26. The international community must work to create a fair and reasonable new international economic order and bring about an international economic climate that favours economic advance in the developing countries. The developed countries in particular have a duty to take practical steps in such fields as debt, funding, trade, aid and technology transfer to help the developing countries surmount their difficulties and promote economic development, in order progressively to close, rather than widen, the North-South divide and to approach - and attain - the goals of common development and common prosperity. Using political and economic dominance to put pressure on developing countries - even imposing unilateral coercive measures to worsen their economic situation - can only imperil their populations' enjoyment of human rights and fundamental freedoms.

Cuba

[Original: Spanish]
[14 December 1994]

Principal legal measures imposed by the United States against the Cuban economy

27. In pursuit of their goal of obstructing, hampering and preventing the economic and social development of the Cuban people, successive United States administrations have implemented a wide range of unilateral coercive measures with political objectives. The United States Government of the day initially focused its actions against Cuba on two areas: fuel and sugar.

28. The economic embargo against Cuba began in 1960 with the reduction of the Cuban sugar quota for that year in the United States market and continued with various acts and executive orders. It was made official policy by executive order in 1962 and tightened even further in 1963 with the passage of the Cuban Assets Control Act.

29. This Act has since been amended on numerous occasions with the aim of further tightening the embargo against the island. Never before in its history has the United States woven such an extensive legal web of acts, legal provisions, executive orders and regulations in an attempt to strangle the economy of a country with which it is not officially at war.

30. The above-mentioned "Cuban Assets Control Act" makes it illegal for subsidiaries of United States companies located in third countries and subject to the laws of those countries to trade with Cuba.

31. In June 1960, the transnational corporation Texaco and later Esso and Shell, refused to refine in their refineries in Cuba the oil which the Cuban Government had begun to acquire in the former Soviet Union, following the refusal of its traditional United States suppliers to continue supplying oil because of pressures from their Government. The aim of this measure was to paralyse the country by depriving it of fuel.

32. From 6 July 1960 onwards, by means of various executive orders, the United States Government temporarily suspended Cuba's sugar quotas and by 7 February 1962 it had imposed a complete embargo against Cuban exports.

33. The economic, trade and financial embargo imposed by the United States against Cuba prohibits commercial, monetary and financial transactions between the United States on the one hand and Cuba and its nationals on the other and freezes all the assets of nationals or the State of Cuba in the territory of the United States. It also places severe restrictions on travel by its citizens to Cuba.

34. It must be remembered that sugar has been and still is the main revenue earner for the Cuban economy and that, historically, the United States purchased Cuban sugar exports, which exceeded 3 million tonnes, at preferential prices. In September 1960, as part of the escalation of its

unilateral coercive measures against Cuba, the Government of the United States decided to suspend the operations of the nickel concentration plant which it owned in Nicaro, former province of Oriente, Cuba.

35. Subsequently, in May 1962, the United States took various legal measures to terminate Cuba's most-favoured-nation status and the preferential treatment which the United States had been obliged to accord to Cuba under the terms of both a bilateral agreement and the rules of GATT, an organization of which both countries are members.

36. In May 1964, the Department of Commerce adopted its most criminal measure, devoid of all humanitarian considerations, when it placed a complete ban on shipments of food and medicine to Cuba.

37. The imposition of the United States embargo meant for Cuba the loss of preferential prices for its sugar exports, loss of earnings, a significant increase in freight charges because of the geographic relocation of its trade, the immobilization of substantial resources, inflated prices for the goods it purchased, the mothballing of plant and equipment because of the lack of spares, the paralyzation of various productive activities and services owing to the lack of raw materials, stocks and replacement parts, and a drop in tourism with the attendant loss of revenue.

38. In September 1962, the United States Government announced that all vessels trading with Cuba, regardless of the country of registration, would be blacklisted and banned from entering United States ports.

39. These measures aimed at vessels trading with Cuba and at transactions with the subsidiaries of American companies were relaxed in the mid-1970s and effectively reinstated by the Administration of President Bush in the Cuban Democracy Act or Torricelli Amendment.

40. Other measures having extraterritorial effect which were imposed as part of the embargo against Cuba and contained in United States federal regulations may be summed up as follows:

- Prohibition against companies of third countries exporting to Cuba goods containing components or materials from the United States;

- Prohibition against nationals of third countries re-exporting goods of United States origin to Cuba;

- A ban on the re-export of technical data from the United States to Cuba in tangible or intangible form for design, production or manufacturing purposes;

- The proposal by the United States to extend the embargo to companies of third countries operating under the laws of third countries if such companies are owned or controlled by United States nationals or corporations, even where such ownership is less than 50 per cent;

- Application of the embargo to any company from a third country which has Cuban nationals on its payroll and freezing of the assets of any such company in the United States;

- Prohibition against banks in third countries from maintaining dollar accounts in favour of Cuba or of Cuban nationals and prohibition against companies in third countries from using United States currency in their transactions with Cuba;

- A ban on the importation from a third country of goods or components of Cuban origin. This applies to goods of Cuban origin even where such goods are not supplied by Cuba and irrespective of the period of time during which the goods in question have been the property of the national of the third country;

- Maintenance by the United States of a blacklist of hundreds of companies of third countries which are labelled "specially designated nationals" of Cuba and with which United States companies and citizens are prohibited from engaging in any commercial or financial transaction;

- Legal requirement for United States Government representatives in international financial institutions to oppose the granting of loans or financial concessions to Cuba.

41. In addition to the above measures, the United States uses its economic and political influence to systematically exert pressure on other Governments, international institutions and private corporations and businessmen with the aim of isolating Cuba and depriving it of any kind of economic link, source of financing, assistance or economic, scientific or technical cooperation.

42. In addition to the numerous other measures prohibiting any economic, financial, technological or scientific links with the island, the provisions contained in the Torricelli Amendment, are designed to increase the cost of imports, to make it more difficult or prevent Cuba from gaining access to the products or financing which it needs and to limit the country's ability to earn income from exports or from business transactions.

43. In June 1993, research into various sectors and areas revealed that the losses incurred by the Cuban economy as a result of the United States embargo amounted to approximately $41 billion, of which $31.7 billion were direct and $9.3 billion indirect losses.

The Torricelli Amendment and trade with subsidiaries of United States companies

44. Since the imposition of the embargo against Cuba, the prohibition of any direct trading links has been extended extraterritorially to the subsidiaries of American companies located in and subject to the laws of third countries.

45. In the mid-1970s, the performance of the Cuban economy and certain favourable international developments of a political, commercial and financial nature spurred the interest of a number of States in trading with Cuba. These

States, however, were faced with the obstacles of the extraterritoriality of the embargo legislation which affected companies located in their territory.

46. The strong influence which its allies exercised on the United States contributed to that country's decision in the mid-1970s to authorize trade by subsidiaries of American companies in third countries with Cuba under certain conditions and to discontinue its policy of blacklisting vessels which transported goods on behalf of Cuba.

47. This new development allowed Cuba to gain access to markets that had previously been closed to it and, even though trade with such countries and with the subsidiaries of United States companies located there was of limited significance in terms of value, it played an important supplementary role in the supply of goods which could not be acquired in the markets of the socialist countries.

48. In the 1980s, the value of transactions between Cuba and the subsidiaries of United States companies in third countries was approximately $250 million and an average of 194 licences were granted each year by the Office of Foreign Assets Control (OFAC) of the United States Treasury Department authorizing transactions with more than 100 such companies in which the balance of trade tended to remain more or less in equilibrium.

49. Following the breakdown of Cuba's economic links with the countries of eastern Europe and the USSR, trade with the subsidiaries of American companies increased rapidly. By 1990, 321 licences had already been issued by OFAC for transactions with Cuba valued at $705 million, in which the value of Cuban imports exceeded that of its exports.

50. In 1991, Cuba remained a net importer in its trade with subsidiaries of American companies, with the level of trade during that year totalling $718 million, of which $383 million were for Cuban imports. In 1992, even though the volume of trade declined to approximately $500 million because of the reduced quantity of Cuban sugar available for export, the value of Cuban imports from these companies rose to $407 million.

51. Nearly 90 per cent of these imports were foodstuffs, including cereals, wheat and other food products, while Cuba exported mainly sugar.

52. Those circles in the United States that were most hostile to Cuba did not fail to notice the growth of this trade and its importance for Cuba in the current circumstances, and they therefore focused their energies on disrupting it in order to hasten the collapse of the Cuban economy.

53. The Bush administration passed legislation prohibiting subsidiaries of United States companies from trading with Cuba and banned vessels which had transported goods on behalf of Cuba from entering United States ports for a period of 180 days.

54. This law, known as the Cuban Democracy Act or Torricelli Amendment, was adopted on 23 October 1992 and was roundly rejected by the international community because of the extraterritorial character of the provisions it contained and its harmful consequences for the Cuban economy, even before the

legislation was actually passed. Its immediate effect was to inhibit some of Cuba's traditional suppliers of goods, including companies which were not subject to the effects of the Act, from negotiating with the island for fear of later reprisals. It also led to an increase in the price of goods and in freight charges because of higher prices and tariffs and other additional expenses occasioned by negotiating new supply contracts and delays in delivery. In addition, it led to widespread disruption of the country's economic system. Of particular note was the adverse impact of the Act on the acquisition of special or irreplaceable supplies, such as products with specific medical uses, basic foodstuffs, spare parts, etc.

55. The effect of the measures taken under the Torricelli Amendment against vessels transporting goods on behalf of Cuba was to limit Cuba's choice of carriers as well as to force it to pay surcharges to shipowners who were willing to run the risk of providing freight services.

56. The limitations imposed by the law sometimes led to situations in which a supplier informed Cuba that it could not fulfil its contractual obligations because of the prohibitions of the United States legislation. This, in turn, led to delays, since other potential suppliers had to be located and overcapacity on vessels had to be reserved or used in order to guarantee the timely arrival of the goods in the country, thereby increasing the cost of the transaction and creating organizational problems for the economy and the distribution of goods in the country.

57. Even though the total economic losses suffered by Cuba as a result of the Torricelli Amendment have not been made public, it is clear that these measures to further tighten the United States embargo have aggravated the critical economic situation of the country and led to shortages of some of the essential goods that are required to maintain at their previous levels the nutritional and health-care standards of the Cuban people, particularly the elderly and children.

58. More recently, on 20 August 1994, the Government of the United States of America announced new measures to tighten yet further the economic, trade and financial embargo. These measures include a ban on cash remittances by United States citizens and residents to their relatives in Cuba; severe restrictions on the mailing of packages from the United States to Cuba, which has been used as a way of providing private citizens in Cuba with medicines, processed foods and other basic necessities that are often in short supply; and a drastic reduction in family visits between the two countries, with a corresponding reduction in the charter flights which have been operating mainly for that purpose.

59. In addition to its declared objective of punishing Cuba and causing it additional economic harm, these measures affect first and foremost the rights and interests of the Cuban community settled in the United States and their family members in Cuba, which contrasts markedly with the Cuban policy of facilitating the development of normal relations between Cuban emigrants and their country of origin.

60. Ironically, the punitive measures recently adopted by the United States against Cuba, far from helping to solve the problem, have had the opposite effect of exacerbating the root causes of the problem and reproducing it, in a vicious circle.

61. The harmful consequences for the population of the draconian embargo imposed by the United States against Cuba could have been worse but for the fair and equitable manner in which the country's available resources are distributed and the more than 35 years of far-sighted investment in the social sector, with the objective of raising the standards of living, nutrition, health and dignity of the Cuban people. Even so, however, the above-mentioned consequences are extremely grave and should not be underestimated.

62. It is important for the international community as a whole to hold the Government of the United States responsible for the implementation of these inhuman measures and their consequences and to take firm action to thwart the attempts of the United States to force a noble people to its knees, to deprive it of its means of subsistence and of its right to self-determination and development, in flagrant violation of international law.

63. We hope that the attention which the United Nations is giving to this matter and the report which the Secretary-General is due to present to the fifty-first session of the Commission on Human Rights will permit the Organization to play a decisive role in putting an end to this unjust and anachronistic situation.

Indonesia

[Original: English]
[1 October 1994]

64. In a world cast with the virulent resurgence of ethnic strife, both ancient and recent, the menacing rise in religious intolerance, new forms of racism and narrowly conceived nationalism as well as the alarming resort to terrorism and blatant aggression all combine to obstruct the building of a more peaceful, prosperous, just and tolerant society, the most important measure which is seriously and increasingly needed is international cooperation and concerted action to address common global problems in full conformity with the Charter of the United Nations.

65. Any form of unilateral coercion, be it an economic embargo or conditionalities on the provision of economic aid, not only violates the very principle of international cooperation that brought countries together in the brotherhood of the United Nations but also, oftentimes, unjustifiably, harms innocent societies or other vulnerable groups such as women, children and the elderly by depriving them of the opportunity to maintain a minimum standard of living thereby breaching their socio-economic rights. This kind of exercise only acts as a barrier to constructive dialogue and mutually advantageous cooperation between countries and tends to exacerbate relations for no substantive gain.

66. With regard to the linkage between human rights and development, Indonesia agrees that there is a broad linkage between the two - for people-centred development makes possible a fuller and more secure enjoyment of human rights, while the implementation and promotion of human rights as part of the national development effort releases the energies and genius of a people so that they become more effective agents of their own development. However, Indonesia does object to the attempt to reduce that broad linkage to a narrow conditionality linkage, by imposing the implementation of human rights as a political condition to economic and development cooperation. Any attempt to use human rights as a condition for extending trade and economic assistance should be rejected. This will be counter-productive and tend to detract from the value of both.

67. It should be recalled that the forty-eighth session of the United Nations General Assembly has adopted by consensus a resolution entitled "Renewal of the dialogue on strengthening international economic cooperation for the development through partnership", which inter alia, reaffirmed the need to strengthen constructive dialogue and partnership in order to promote further international economic cooperation for development. The fact that the developed countries, the economies in transition, the developing countries and the members of the Non-Aligned Movement have joined, not only in adopting the consensus resolution but also in sponsoring it, sends a strong signal that the time has come for all countries to work together in forging a genuine partnership for development.

68. The Final Document of the 11th Ministerial Meeting of the Non-Aligned Movement, held in Cairo, from 31 May-3 June 1994 stated among other things that all nations have the right to freely establish their own political, social, economic and cultural systems on the basis of respect for the principles of national sovereignty and non-interference in the internal affairs of others. It also stressed the fact that human rights should not be used as instruments of political pressure, especially against the non-aligned and other developing countries.

69. Instead of diverting efforts and resources to exert unilateral coercion, countries should pay more attention in the field of human rights to increasing the role of advisory services and technical assistance programmes in the framework of international cooperation within the human rights bodies of the United Nations. In this respect the General Assembly has elaborated advisory services programmes containing a large educatio al component. This is in fact a matter of implementation, not a review of established principles.

70. It is therefore timely to introduce a new perspective in the work of the human rights bodies of the United Nations on the issue of strengthening international cooperation to promote and protect all human rights. The rationale behind this proposal is that the United Nations Charter has rightly placed the question of the universal observance and promotion of all human rights and fundamental freedoms within the context of international cooperation, as validly stipulated in its Articles 1 (3), 13 (b), 55 (c) and 56. Any ideas or concepts which are at variance with this fundamental principle go against the purposes and principles of the Charter.

Iraq

[Original: Arabic]
[28 October 1994]

71. The Government of the Republic of Iraq is diligently endeavouring to ensure observance of the human rights principles set forth in the Universal Declaration of Human Rights and other international human rights instruments and conventions. Its commitment to these principles and rights stems from its deep-rooted belief therein and its condemnation of any violation of these principles, as referred to in the Commission on Human Rights resolution entitled "Human rights and unilateral coercive measures", particularly operative paragraphs 3, 4 and 5 thereof, since such coercive measures taken against a particular State impede the full realization of all human rights, especially in the case of vulnerable categories such as women, children and elderly persons who are thereby deprived of the enjoyment of a standard of living adequate for their health, including food, medical care and the necessary social services.

72. The resolution reaffirms that essential goods, and particularly food, should not be used as a tool for political pressure. This is also emphasized in article 31 of the Vienna Declaration and Programme of Action adopted in 1993, which stipulates that food should not be used as a tool for political pressure. The content of the resolution constitutes a practical application of the provisions of the Universal Declaration of Human Rights and other international human rights instruments and conventions and reflects equitable principles to guarantee the rights of the peoples of the developing countries, as well as their control over their destinies in the face of exploiting States that possess vast economic resources and are attempting to use every means to exercise hegemony and control over the destinies of those countries. The resolution also reflects the principle that countries have a right to freely determine their political, economic and social system.

73. It is noteworthy that our country is suffering from coercive measures and procedures that have been taken against it for more than four years and which are incompatible with human rights principles in so far as they preclude the full enjoyment of all human rights by Iraqis, particularly women, children and elderly persons, by preventing these categories from enjoying an adequate standard of living, including food, medical care and the social services that they need.

Libyan Arab Jamahiriya

[Original: Arabic]
[28 September 1994]

74. The use of economic coercive measures by some developed countries as a means of exercising political or economic pressure against developing countries constitutes a grave violation of the latter's political and economic rights, impedes the free choice by peoples of their economic, social and political systems and falls within the framework of colonialist practices aimed at depriving those peoples of their right to achieve economic and social progress. Moreover, economic coercive measures are incompatible with the

basic principles of international law and those set forth in the Charter of the United Nations. In particular, they are contrary to the provisions of article 32 of the Charter of Economic Rights and Duties of States, which stipulates that no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights. Such measures also constitute a grave violation of numerous resolutions adopted by the General Assembly of the United Nations, the most recent of which was resolution 48/168 of 21 December 1993 in which the international community was called upon to adopt urgent and effective measures to eliminate the use by some developed countries of unilateral economic coercive measures against developing countries as a means of forcibly imposing the will of one State on another.

75. The Libyan Arab Jamahiriya wishes to emphasize that all forms of economic coercive measures such as trade restrictions, blockades, embargoes, freezing of assets, restrictions on the export of technology, the use of human rights as a condition for the expansion of trade and the provision of aid for developing countries, as well as other political conditions which some developed countries repeatedly impose on international cooperation with developing countries, adversely affect the atmosphere of trust and confidence in international relations, in addition to their severe repercussions on the economies of those developing countries, which suffer tremendous economic losses as a result of the imposition of restrictions on their exports, the curtailment of their imports, the obstruction of the flow of funds and aid to them and the freezing of their assets abroad.

76. The Libyan Arab Jamahiriya is currently suffering severe damage and numerous economic and social problems due to the air boycott and other coercive measures that have been imposed on it by some developed countries and which have endangered the lives of many innocent persons, thereby violating their human rights recognized in the Charter and all international human rights instruments, such as their right to adequate food, freedom of movement, development and all the economic and social rights embodied in the International Covenant on Economic, Social and Cultural Rights.

77. The United Nations, being committed to respect for all human rights, should deal with the adverse effects of these coercive measures on human rights and establish a mechanism to monitor the forms of these economic coercive measures, the purposes that they are designed to achieve and their repercussions on the economies of the developing countries affected thereby and of the countries that impose them, with a view to determining the manner in which they should be tackled and finally eliminated.

Mauritius

[Original: English]
[31 October 1994]

78. No unilateral coercive measures which are in clear contradiction with international law and the Charter of the United Nations are used by the Government of Mauritius. The Government of Mauritius is also not aware of any such measures applied to Mauritius by any other States.

Philippines

[Original: English]
[26 October 1994]

79. According to Section 13, Article XII of the Philippine Constitution,

> "The State shall pursue a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity".

80. The Philippines strongly believes that unilateral coercive measures are contrary to the right to self-determination enshrined in the Universal Declaration of Human Rights. Unilateral coercive measures deprive a nation of the means with which to fulfil its obligation to its constituents towards the fulfilment and enhancement of their human rights. The Philippines therefore joins the United Nations Commission on Human Rights in condemning the use by certain countries of unilateral coercive measures against developing countries.

III. REPLIES RECEIVED FROM UNITED NATIONS BODIES AND SPECIALIZED AGENCIES

United Nations Children's Fund

[Original: English]
[18 October 1994]

81. While appreciating the difficulties confronted by the Security Council in obtaining compliance with internationally agreed standards, UNICEF, in meeting its obligations to children in the affected countries, is concerned by the negative and, at times, devastating effect on the health and nutritional status of women and children which such sanctions can produce.

82. At the 1992 session of the Executive Board of UNICEF, the United Nations High Commissioner for Refugees stated that sanctions affected emergency response, as they could be detrimental to the provision of humanitarian assistance. UNICEF endorses this statement, and points out that sanctions should not prevent the delivery of humanitarian supplies.

83. In recognizing every child's right to develop physically, mentally and socially to his or her fullest potential, the Convention on the Rights of the Child has clearly enhanced the work of UNICEF. The importance of this document to our ongoing efforts in these areas, and the belief in the powerful message carried by the Çonvention, led UNICEF to identify the universal ratification of the Convention as one of its mid-decade goals for 1995. It was in the context of the Convention that the Executive Director of UNICEF said to the Commission on Human Rights last year that "without renouncing the non-military mechanisms of international pressure wisely provided in the Charter, it should be possible to refine our existing tools - or to develop others - so that children are not major and unintended victims of particular

sanctions". To this end, UNICEF recommends that any proposals for sanctions include a "child impact assessment", describing the expected impact of the proposed sanctions on children, and detailing the offsetting measures proposed to be taken.

84. UNICEF concerns regarding sanctions are outlined in its Executive Board Document No. E/ICEF/1993/11 where it is stated that "the provision of humanitarian assistance within the context of sanctions should be unconditional and not subjected to compliance of certain requirements implied in enforcement of sanctions" - including ensuring the maintenance of basic social services.

85. While appreciating the far-reaching implications and difficulties associated with this complicated area, UNICEF welcomes the opportunity to contribute to this debate, and is eager to resolve the question of sanctions in such a way that does not interfere unduly with the promotion and protection of children's rights and the health and well-being of children and other vulnerable persons in the affected countries.

IV. REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

Institute of International Law

[Original: French]
[4 October 1994]

86. The Institute of International Law, at its session held at Santiago de Compostela in 1989, adopted a resolution entitled "The protection of human rights and the principle of non-intervention in internal affairs of States" (Yearbook of the Institute of International Law, vol. 63-II, 1990, p. 338).

87. In essence, this resolution states, inter alia, that States, acting individually or collectively, are entitled to adopt coercive measures which do not involve the use of armed force against a State which is in breach of its human rights obligations, particularly when the violations are grave, notably large-scale or systematic violations, the objective of the measures being to put an end to such violations.

88. In the view of the Institute, the principles set forth in the resolution of Santiago de Compostela are a manifestation of positive international law, the lex lata (see commentary of Ch. Dominicé, "La contrainte des Etats à l'appui des droits de l'homme", Etudes en hommage à Manuel Diez de Velasco, Madrid, Technos, 1993, pp. 261-272).

89. Commission on Human Rights resolution 1994/47 should be interpreted in the light of the rules of international law which, in certain circumstances, and particularly in cases of grave violations of human rights, authorize recourse to coercive and even unilateral measures, within certain limits and under the conditions established by international law itself.

90. Text of the Resolution:

The Institute of International Law,

Recalling its Declarations of New York (1929) on "International Human Rights" and of Lausanne (1947) on "The Fundamental Human Rights as a Basis for Restoring International Law" as well as its Resolutions of Oslo (1932) and Aix-en-Provence (1954) on "The Determination of the 'Reserved Domain' and its Effects",

Considering,

That the protection of human rights as a guarantee of the physical and moral integrity and of the fundamental freedom of every person has been given expression in both the constitutional systems of States and in the international legal system, especially in the charters and constituent instruments of international organizations,

That the Members of the United Nations have undertaken to ensure, in cooperation with the Organization, universal respect for and observance of human rights and fundamental freedoms, and that the General Assembly, recognizing that a common understanding of these rights and freedoms is of the highest importance for the full realization of this undertaking, has adopted and proclaimed the Universal Declaration of Human Rights on 10 December 1948,

That frequent gross violations of human rights, including those affecting ethnic, religious and linguistic minorities, cause legitimate and increasing outrage to public opinion and impel many States and international organizations to have recourse to various measures to ensure that human rights are respected,

That these reactions, as well as international doctrine and jurisprudence, bear witness that human rights, having been given international protection, are no longer matters essentially within the domestic jurisdiction of States,

That it is none the less important, in the interest of maintaining peace and friendly relations between sovereign States as well as in the interest of protecting human rights, to define more precisely the conditions and limitations imposed by international law on the measures that may be taken by States and international organizations in response to violations of human rights,

Adopts the following Resolution:

Article 1

Human rights are a direct expression of the dignity of the human person. The obligation of States to ensure their observance derives from the recognition of this dignity as proclaimed in the Charter of the United Nations and in the Universal Declaration of Human Rights.

This international obligation, as expressed by the International Court of Justice is erga omnes; it is incumbent upon every State in relation to the international community as a whole, and every State has a legal interest in the protection of human rights. The obligation further implies a duty of solidarity among all States to ensure as rapidly as possible the effective protection of human rights throughout the world.

Article 2

A State acting in breach of its obligations in the sphere of human rights cannot evade its international responsibility by claiming that such matters are essentially within its domestic jurisdiction.

Without prejudice to the functions and powers which the Charter attributes to the organs of the United Nations in case of violation of the obligations assumed by the Members of the Organization, States, acting individually or collectively, are entitled to take diplomatic, economic and other measures towards any other State which has violated the obligation set forth in Article 1, provided such measures are permitted under international law and do not involve the use of armed force in violation of the Charter of the United Nations. These measures cannot be considered an unlawful intervention in the internal affairs of that State.

Violations justifying recourse to the measures referred to above shall be viewed in the light of their gravity and of all the relevant circumstances. Measures designed to ensure the collective protection of human rights are particularly justified when taken in response to especially grave violations of these rights, notably large-scale or systematic violations, as well as those infringing rights that cannot be derogated from in any circumstances.

Article 3

Diplomatic representations as well as purely verbal expressions of concern or disapproval regarding any violations of human rights are lawful in all circumstances.

Article 4

All measures, individual or collective, designed to ensure the protection of human rights shall meet the following conditions:

(1) except in case of extreme urgency, the State perpetrating the violation shall be formally requested to desist before the measures are taken;

(2) Measures taken shall be proportionate to the gravity of the violation;

(3) Measures taken shall be limited to the State perpetrating the violation;

(4) The States having recourse to measures shall take into account the interests of individuals and of third States, as well as the effect of such measures on the standard of living of the population concerned.

Article 5

An offer by a State, a group of States, an international organization or an impartial humanitarian body such as the International Committee of the Red Cross, of food or medical supplies to another State in whose territory the life or health of the population is seriously threatened cannot be considered an unlawful intervention in the internal affairs of that State. However, such offers of assistance shall not, particularly by virtue of the means used to implement them, take a form suggestive of a threat of armed intervention or any other measure of intimidation; assistance shall be granted and distributed without discrimination.

States in whose territories these emergency situations exist should not arbitrarily reject such offers of humanitarian assistance.

Article 6

The provisions of this Resolution apply without prejudice to the procedures prescribed in matters of human rights by the terms of or pursuant to the constitutive instruments and the conventions of the United Nations and of specialized agencies or regional organizations.

Article 7

It is highly desirable to strengthen international methods and procedures, in particular methods and procedures of international organizations, intended to prevent, punish and eliminate violations of human rights.

(13 September 1989)

International Organization for the Elimination of All Forms of Racial Discrimination

[Original: English]
[28 July 1994]

91. In regard to "Human rights and unilateral coercive measures", EAFORD would like to draw the attention of the Commission to the situation in Iraq.

92. Everyone knows through the media and the announcements of the United Nations representatives and inspectors regarding Iraq that the Iraqi people have fulfilled all of the conditions that were imposed on them hoping to put an end to the strict sanctions which devastated Iraq's infrastructure for over three years.

93. We think that the international community and world opinion which is usually disturbed by isolated incidents involving an explosion of a bomb or an assassination of a person cannot tolerate the ongoing torment of an entire people consisting of 18 million Iraqis who have been deprived of their sources of livelihood and the only means of feeding their women and children, bearing no guilt whatsoever in any of the political conflicts in this world.

94. We are afraid that although we are embarking on the twenty-first century the liquidation of people by murder, starvation and destruction of economic, industrial, educational and cultural basic structures on which a society is built still take place, due to ethnic, racial, religious or ideological reasons. Without a doubt, if this continues it will be a disgrace for which the future generations will not forgive us.

95. Since it has been verified that the people of Iraq have responded to and fulfilled all of the conditions imposed by the Security Council, although some of the sanctions were cruel and lacked proper justification, then the continuation of the sanctions against the people cannot be due to anything but to unhealthy and unjustified political reasons, with the purpose of exerting, directly or indirectly, coercion on the sovereign decisions of this country.

96. We take this opportunity to appeal to the United Nations and its respected councils so they will not be a tool in the hands of those who have ulterior motives.

97. International public opinion, its agencies and non-governmental organizations call upon the United Nations to work seriously on ending this tragic and deviant situation.

98. It is our great hope and great wish that the people of the world will continue believing in this tenacious organization, "The United Nations". Any shaking in this belief will indeed mean a real world disaster.

International Progress Organization

[Original: English]
[3 August 1994]

99. We would like to note that the adverse effects in the field of basic human rights are also caused by multilateral sanctions. The Commission on Human Rights should not overlook a possible conflict between the policies of "collective security" and the universal validity of human rights.

100. Our organization is presently undertaking a study on the ethical aspects of sanctions in international law, the results of which we shall make available to the Commission on Human Rights.